

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

JAMES ROBINSON
Claimant

APPEAL NO: 15A-UI-00898-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

SDH SERVICES WEST LLC
Employer

OC: 12/14/14
Claimant: Respondent (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the January 13, 2015, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on February 13, 2015. The claimant participated in the hearing. Brad Wilhelm, Operation Manager and Judy Vilaylak, Employer Representative, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a part-time custodian for SDH Services West from July 19, 2013 to October 23, 2014. The claimant had shoulder replacement surgery and was off work from April 9 through October 22, 2014, when he received a full release to return to work. The claimant's medical documentation that was originally submitted by the claimant's physician June 17, 2014, indicated he would be released to return to work August 21, 2014. The claimant was not aware of that note and consequently did not return to work until he received a note from his surgeon giving him a full release to return to work without restrictions October 22, 2014. On October 23, 2014, the claimant went to the employer to discuss his return to work but was told they were too busy to talk at the time. The claimant said he would call Operation Manager Brad Wilhelm Monday but Mr. Wilhelm told the claimant he would call him instead. The claimant did not receive a call and eventually concluded his employment was terminated due to a lack of work on behalf of the employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes no work was available to the claimant upon his release to return to work from a non-work related injury.

Iowa Code § 96.5-1 provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

Iowa Code § 96.5-1-d provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department. But the individual shall not be disqualified if the department finds that:

d. The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

871 IAC 24.26(6)b provides:

(6) Separation because of illness, injury, or pregnancy.

b. Non-employment related separation. The claimant left because of illness, injury or pregnancy upon the advice of a licensed and practicing physician. Upon recovery, when recovery was certified by a licensed and practicing physician, the claimant returned and offered to perform services to the employer, but no suitable, comparable work was available. Recovery is defined as the ability of the claimant to perform all of the duties of the previous employment.

The claimant's return to the employer to offer services after the medical recovery evinces an intention to continue working. The employer did not have time to talk to the claimant and did not communicate with him further after he returned with a full release October 23, 2014. Consequently, the administrative law judge concluded the separation was attributable to a lack of work by the employer. Therefore, benefits are allowed.

DECISION:

The January 13, 2015, reference 01, decision is affirmed. The claimant was laid off due to a lack of work. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs